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Quid Novi

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McGILL UNIVERSITY FACULTY OF LAW
UNIVERSITE MCGILL FACULTE DE DROIT

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SKIT NITE ON REVIEW

by Alexandra Gillespie, BCL III; Greg Moore and Nancy Girard, BCL II

The response to this year's skit nite has been overwhelmingly positive. High points of the show included a surprise opening by Dean Stevens and a cameo appearance by an comedian from «Saturday Night Live».

The production of the show was excellent. None of the often ubiquitous gaps between skits. The music also received accolades. The addition of the horn section provided variety of sound and amazing coherence for a band that has not had

a long history.

It is always a thrill for students to see professors participate, and it is especially encouraging to see them attending and enjoying the ribbing they receive from the students.

Unfortunately, the underlying theme of leaving the province and making hordes of money took away from the evening's otherwise upbeat tone.

Malheureusement, cette année ne fut pas vraiment différente des autres avec très peu de participation francophone.

Un effort devrait être fait de la part du comité organisateur afin d'assurer que l'aspect bilingue de la faculté soit mieux représenté.

Nous tenons à féliciter le comité pour leur travail acharné durant toute l'année qui a permis d'amasser plus de \$10,000 pour la «Old Brewery Mission» et «Chez Doris» qui fournissent des services aux sans-abri et aux démunis.

The Statistics of Rape

By David Abitbol, BCL II

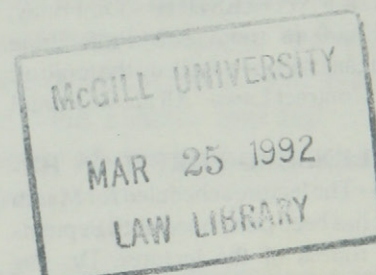
At the beginning of the semester I wrote an article about Bill C-49, and its new rape-shield and consent provisions. By way of introduction, I cited some statistics that I had found similarly cited in several magazines and newspapers. These usually unattributed statistics have been cited so often that they have become commonly accepted, the most well known being the assertion that 1 in 4 women will be raped in her lifetime.

So I got to thinking, what would my legal research and writing tutorial leaders say if I had cited such a statistic in an assignment without a source? And would a second-hand citation from the *Concordia Link* have been sufficient? In response to

the first question, I don't think my tutorial leaders would have been impressed, and a second-hand citation is clearly insufficient. Consequently, during spring break (before I got to New Orleans for Mardi-Gras....) I did a little research, and found some surprising things. The claim that 1 in 4 women will be raped in her lifetime is actually based on a few highly questionable studies promoted by special interest groups seeking to redefine sexual behaviour as sexual oppression.

In its well-respected crime surveys, the U.S. Bureau of Justice (BJS) interviews over 100,000 people twice a year in an attempt to get a handle on reported and unreported crimes. After nearly 10 years of research, the BJS estimates the lifetime likelihood of rape and attempted

Cont'd on p.4



IN THIS ISSUE DANS CE NUMERO

Law Journal / Revue de droit... p.3

Hockey Game???... p.3

Ovide Mercredi... p.5

The Wilson Moot... p.8

ANNOUNCEMENTS - ANNONCES

GRADUATION UPDATE - Tickets will be available for the Graduation ball in approximately 2 weeks. Watch this space. Also - Graduation T-shirts will be sold to help raise funds for the event. These designer items are not to be missed!!!!

NORTH AMERICAN STUDY ABROAD PROGRAM OF BOND UNIVERSITY, QUEENSLAND, AUSTRALIA - Bond University is Australia's most recently created University and it graduated its first complete class in its School of Law in January of 1992. The vocation of Bond University is specifically directed to the promotion of «teaching excellence». In order to encourage strong contacts overseas, the University has created a number of tuitions scholarships available for study at Bond University. These scholarships would be available to undergraduates seeking to pursue a term or year abroad, and would also be available to help finance post graduate education. A number of application forms have been sent to this Faculty of Law, and further information is available from Professor Toope. It should be noted that for undergraduates seeking to spend a year abroad, special permission is required of the Associate Dean (Academic). This announcement is not an indication that any specific program of studies abroad would in fact be authorized by the Associate Dean. Specific arrangements must be made by individual students with Professor David Stevens.

LEGAL THEORY WORKSHOP - On Friday, March 27 at 12h00 in room 202, Prof. Brian Simpson (Michigan) will give a talk on the topic of: «Legal History, Contract Law». All are welcome!

RAOUL WALLENBERG FORUM ON HUMAN RIGHTS - The lecture scheduled for March 26th at 8h00 pm. has been postponed until September due to the illness of the lecturer, Dr. Per Ahlmark.

DROIT CONSTITUTIONNEL - Le prof. de Mestral recherche au moins 6 étudiant(e)s de 3e ou 4e année pour diriger des travaux pratiques (tutorials). Il y aura 3 groupes au premier trimestre et 3 au deuxième trimestre de l'année académique 1992-93. Un groupe sur trois sera dirigé en anglais, les deux autres en français. Avec l'approbation du vice-doyen, ce travail reçoit des crédits universitaires. Prière de faire parvenir vos CV au prof. de Mestral (3647 Peel, bureau 202, ou téléphonez au 398-6643 pour de plus amples renseignements).

REVUE DE DROIT/LAW JOURNAL - Le nouveau comité de rédaction pour l'année 1992-93 a été élu le 5 mars dernier. Voici les résultats du vote: Rédacteur-en-chef/Editor-in-chief: Mark Phillips; Rédactrice en chef adjointe/Associate Editor: Julie Beauchemin; Secrétaire général/Executive Editor: Chris Naudie; Directeur Administratif/Managing Editor: Randal Barker; Rédactrice des chroniques bibliographiques/Book Reviews Editor: Lise Rochette; Rédactrice de jurisprudence/Comments Editor: Heather Andersen; Rédacteur des références/Citations Editor: Nan Wang; Rédacteurs des notes étudiantes/Note Editors: Sivan Fox & Matthew Taylor. Félicitations à tous!!!

ENVIRONMENTAL LAW ASSOCIATION - elections on Wednesday, march 25 at 12:00 in room 203. The Environmental Law Association of McGill will be holding elections for next year's executive. The position of President, Treasurer and Secretary will be open for nomination. All students are welcome to compete for any of the positions and/or to participate in the vote.

LSA - GET INTO IT! - Make your 1992-1993 your greatest year and get involved! If you are interested in **any** of the following positions for the

1992-1993 academic year, please sign up for an **interview** on the «sign-up» list posted outside the L.S.A. office. The deadline for signing up will be Friday, March 27, 1992 at noon.

The positions are:

Chairperson of the:- Computer Committee; - Yearbook Committee; -Graduation Committee; - Careers Day Committee; -Orientation Committee; -Facilities Committee. **Member of the:-** Judicial Board; -Library Committee; -Admissions Committee; -Examination Board; -Staff Appointments Committee; -Promotions and Renewals Committee; -Curriculum Committee. Chief Returning Officer.

If you are interested in joining a committee, please sign up for each committee by Friday, March 27, 1992 at noon. The «sign-up» sheets will be posted outside the L.S.A. office. If you are interested in more than 1 committee, please ballot your choices.

The committees are:

Social Committee; Yearbook Committee; Graduation Committee; Computer Committee; Careers Day Committee; Orientation Committee; Facilities Committee; Sports Committee.

If you have any questions, come into the L.S.A. office, we would be glad to help in any way.

COIN DES SPORTS CORNER - Women's intramural hockey - Malum in Se and Public Offenders are eliminated from the play-offs after they were both defeated on Monday March 9th. Both teams had a very good season and would like to thank their respective coaches.

QUID NOVI 1992-93

To anyone interested in working for the *Quid Novi* next year: Please drop off your name and phone number in the *Quid* box in the LSA office before 5:00 pm on Tuesday, March 24th. A meeting will then be held the following day, Wednesday, March 25th at 13:00 in the *Quid Novi* office, which is right across the street, at 3661 Peel, next to the *Law Journal*. All budding journalists are welcome, don't be shy! La charge de travail consiste essentiellement à assis-

ter à une réunion hebdomadaire, à faire de la correction d'épreuves, à solliciter des articles et à en écrire de façon régulière.

The positions on the *Quid* Board for next year will be as follow: Rédacteur-en-chef/Editor-in-chief; Directeur de l'information/News Director (responsible for ensuring coverage of conferences and events happening in the Faculty generally); Directeur artistique/Ar-

tistic Director (responsible for supervising the layout and production aspects of the *Quid*); Directeur Administratif/Administrative Director (responsible for all financial and administrative matters), general Editors (responsible for soliciting, correcting and writing articles on a regular basis, and for attending a weekly meeting) and a Production team composed of 2-4 people, who will carry out the actual production of the *Quid* every week.



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THE MCGILL LAW JOURNAL NEEDS YOU

If you are a first or second year student, the **McGill Law Journal** needs you. Come and attend a reception to be held on Wednesday April 1 in the Common Room from 12:00 to 2:00 p.m. The **Law Journal** is one of the most fulfilling extra-curricular activities which law students have to choose from. It is a two year commitment to play a hands-on role in the production of one of Canada's most respected legal journals. Articles published in the **McGill Law Journal** are frequently cited by the Supreme Court of Canada and in academic writing. The **Journal** needs people of diverse talents and interests. The selection and editing of articles requires a good analytical and critical sense as well as a certain facility with language. But articles of the standard which the Journal sets for itself rarely just fall into its lap. The **Journal** therefore needs individuals who are prepared to take initiative and solicit articles from the leading authors. If there is a particular area of the law which interests you, this is an ideal way to immerse yourself in it while making a tremendous contribution to Canadian legal literature.

The **Journal** is not just a forum for legal scholarship, however; it is also a business. For this reason several board members are chosen each year to assume managerial responsibilities. In addition to looking after the day-to-day affairs of the **Journal**, these members become involved in special projects to increase revenue and cut costs. Next year these will include a marketing campaign for the third edition of the Cite Guide and a general fundraising drive. Selections for next year's board will be made in September, at which time candidates will be asked to evaluate an article. At the reception, you will have the opportunity to put your name on a list of people who wish to do a practice evaluation over the summer. Journal members will be present to answer your questions about the application process and give you an idea of what life is like on the **Journal**. Refreshments will be served.

LA REVUE DE DROIT DE MCGILL A LA RECHERCHE DE FRANCO-PHONES

Le mercredi 1er avril de midi à 14 h, La **Revue de droit de McGill** tiendra une réception dans le common room dans le but de se faire connaître davantage auprès des étudiants et étudiantes en première et en deuxième années, c'est-à-dire ceux celles qui sont destinés à prendre la relève. Les francophones de notre faculté ont droit à une invitation toute spéciale à cet événement car ce sont eux qui risquent de sous-estimer les possibilités qui s'offrent à eux à la **Revue**. Mais soyons très clairs dès le départ: la **Revue** a besoin de francophones. En fait, la **Revue** tâche de publier de plus en plus d'articles en français.

Cette année, par exemple, la **Revue** publiera un numéro spécial sur le règlement des différends internationaux, et soixante-quinze pour cent des articles qui y paraîtront sont en français. Il est donc primordial qu'il y ait des francophones à la **Revue**. La sélection pour l'année prochaine se fera au mois de septembre. On demandera à chaque candidat d'évaluer un article et de se présenter pour une entrevue. Mais si la **Revue** vous intéresse, il faut d'ores et déjà commencer à y penser, car à la réception vous pourrez inscrire votre nom sur une liste de personnes à qui on enverra un article cet été pour qu'elles puissent faire une évaluation avant celle qui sera imposée en septembre. Des étudiants et étudiantes qui sont membres de la **Revue** cette année seront présents à la réception pour répondre à toutes vos questions. Au plaisir!

????????????????

By Jennifer Zerczy, Nat. IV

While many of you were off sunning yourselves down south during Reading week, another activity took place in association with the law faculty which was well-worth attending for those of us remaining around the faculty on Monday February 24th.

Of course I am referring to the Law Profs vs Amazons hockey game, which pitted an all-star cast from the women's inter-faculty teams against several professors and some students. The professors won 5-1 in a game which featured neither periods nor penalties, but which did include 50 minutes of unmitigated chaos and fun followed by a field trip to «the Pines».

Highlights of the game: Goals scored by «Ivan the Terrible» Vlastic and Rod «If I can't go around them, I'll go through them» MacDonald. The players' award goes to Jeremy Webber who by our accounts in the women's locker room was «the cutest» and put on the best display of sportsmanship and good humour.

Prof. Glenn's impressive performance prompted one Amazon to remark «You know, he's faster than he looks». Most apologetic: Patrick «I'm much better at squash» Healy who «accidentally» nailed several Amazons. Associate Dean Stevens was undoubtedly untouchable. He evaded the Amazon's goon squad, a feat few have managed and even fewer have lived to talk about. No doubt, he will be bragging about it at the faculty club.

Goaltender for the profs was Jeremy Glenn (son of the Glenns) who, incidentally could have read War and Peace while in net, with the exception of Sophie A.'s shut-out stealing goal, which he is probably still analysing. Veronica M.

Cont'd on p.4

Statistics of Rape... Cont'd from p.1
rape at 1 in 12. While this is still quite serious, it is somewhat less horrific than the 1 in 4 figure.

Yet the BJS studies are rejected by those interested in promoting the more disturbing statistics, and their own particular agendas, most notably that of feminist separatism. This entails not just a rejection of patriarchal society, but a rejection of *all* males. A perfect example of what I am talking about is espoused by the feminist anti-pornography activist Andrea Dworkin, who believes that all sex between men and women is a form of rape. She states that «...male pleasure is inextricably tied to victimizing, hurting, exploiting....sexual fun and sexual pleasure...are inseparable from brutality.»

When consensual sex is defined as rape, it is no wonder that certain researchers can find ample proof for skewed statistics. Diana Russell, author of the frequently cited rape study *The Politics of Rape*, openly admitted her bias when she stated that «A key hypothesis of our study was that...we should find that rape and other kinds of sexual abuse are quite prevalent.» One has to question just how broad her definition of rape had to be to meet her expectations.

Russell's 1984 study entailed a survey of 930 women, and concluded 22 % were rape victims. In the questionnaire, she decided not to use the word rape itself, deeming this to be an «unpromising approach.» Instead she takes an approach where she, not the subjects, defines what rape is. For instance, questions like «Before you turned 14, were you ever upset by someone exposing their genitals?» classified «yes» answers from 58% of the respondents as victims of childhood sexual abuse and incest.

Another frequently cited rape study is by Mary P. Koss, a professor at Kent State University. Published in 1985 by *Ms.* magazine, Koss' study, involving over 6,000 students across the U.S., concluded that 27.5% of those surveyed had been victimized by rape or attempted rape. While Koss used a more or less legal definition of rape - intercourse obtained through force, threat of force or incapacitation, some of her questions were open to various interpretations. For instance, the question «Have you ever had sexual intercourse when you didn't want to because a man gave you alcohol or drugs?» could easily define a consensual, if otherwise sleazy, exchange of sex for drugs as an act of rape. In light of this it is not surprising that of all the women defined by Koss' study as rape victims, only 25% agree that they actually were.

Despite the questionable scientific validity of these studies, they have been well cited in the press, while studies resting on sounder principles like that by the BJS which is based on neutral questions, controlled environments, and an effort to avoid leading the respondents, have been largely ignored.

The attempt to sensationalize a serious issue like sexual assault does a great disservice to its victims. By turning rape into a catch-all phrase, these studies trivialize the seriousness of the crime. Exhibitionism is given the same statistical weight as father-daughter rape. A traumatic physical assault is equated with a consensual, though morally questionable, sexual encounter. Women who firmly declare that they haven't been assaulted are thrown into the same statistical pool as women who have.

The use of rape as a political weapon, merely serves to exploit the victim once more in a process that is already traumatic and rife with exploitation. Those that seek to promote radical feminist ideology are doing so to the detriment of those seeking justice for all victims of sexual assault. This, especially in light of the thorny and very vocal debate going on now concerning the proposed implementation of Bill C-49.

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saved the Amazons from an even more humiliating defeat, yet once again.

Jacques N., after being traded to the Amazons in exchange for Corrie «we didn't want her anyway» S., has since expressed a desire to get in touch with his

feminine side and was overheard remarking: «Men are such pigs» later in the evening.

The yowza! where has he been hiding all year?» award goes to, as impressive off the ice as he was, Ian S. There were several locker room requests as to his civil status.

Spectators included Jane Glenn, the Stevens' family, a dog in an argyle sweater, Ron Sklar and a student section headed up by Tina H. and Tash K.

Many thanks to Sophie A. and prof Vlastic for organizing this event. A good time was enjoyed by all. Incidentally, there were as many injuries as there were profs and their victims on the Amazons.....

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OVIDE MERCREDI: OR THE PREVENTION OF NATIVE PEOPLES BEING BURIED ALIVE.

By Chris Bush, BCLI

This is a response to Martin-Pierre boulianne's commentary in the Quid dated Jan. 31, 1992. I obtained a copy of Ovide Mercredi's statement to the National Assembly to see exactly what he had proposed so I could make a wellinformed response to Mr. Boulianne. The first point I wish to address with respect to Mr. Boulianne's commentary is that Ovide Mercredi did not deny that French Quebecers are as distinct as Native Peoples. Mercredi simply made a legal distinction between rights Native Peoples as «peoples» have under International law concerning self-determination. These rights are recognized in the Charter of United Nations and the International Bill of Rights. There are five requirements which have to be satisfied before a «peoples» can claim self-determination. The requirements are that the «peoples» must have their own common history, cultural or linguistic ties, ancestral territory, and government. It is true that French Quebecers have at least four out of five criteria but the difference Ovide Mercredi tried to establish was that as a «province» Quebec did not satisfy the criteria. This was the point he was making in saying that under International law it would be impossible for Quebec to attain self-determination. Quebec as a Province is made up of many diverse backgrounds, many ethnic origins, therefore as a province it does not qualify as a «peoples».

Bill 150: An Act Respecting The Process for Determining the Political and Constitutional Future of Quebec, proposes that Quebec has the right to determine the political status and destiny of all peoples within its borders. This is the legislation Ovide Mercredi was referring to when he addressed the National Assembly, and

this is what he based his statements on in saying that Quebec as a «province» had no claim to self-determination under International law. He never said French Quebecers had no right to decide their own destiny but only that if they wish to claim the whole «province» as self-determinative they did not have a very good legal argument in International law. In fact, Ovide Mercredi states in his speech that «It would appear that the French Canadian Nation centered in Quebec, may be a people with a right to self-determination. It is up to French Canadians to make their own case. However, if such right exists, it cannot be exercised in a manner that denies or impinges on the right to self-determination of First Nations Peoples.»

Another statement, in support of French Quebecers Mercredi made, is: «I want to make it clear that we have always acknowledged and respected the collective rights of French Canadians. You are a distinct society. However in the wake of your broader objectives that impact severely on the destiny and territories of First Nations, we will not become passive or subordinate societies.»

I do not see how much clearer it could be made that Ovide Mercredi and First Nations Peoples accept French Canadians as distinct and capable of pursuing self-determination. The only point he was making was that Native Peoples will not stand by and let their destiny be chartered by some other group.

Mr. Boulianne, you found Ovide Mercredi's propositions outrageous and insulting. I find that hard to believe since he specifically stated that French Canadians are distinct and that they, as a «peoples», might have a case in International law to attain self-determination. Ovide Mercredi only stated that

Native Peoples will not be treated as second or third class citizens and that it is up to us to determine our future. He did not deny that French Quebecers are entitled to control their own destiny but that Native Peoples «will not take a back seat» to anyone.

The statements of Ovide Mercredi are not meant to build walls between Natives and non-natives. His words are not going to cause a racial war as you claim. What will cause racial tension are the words of Claude Masson. I feel sorry for you if you truly believe that he eloquently summarized what life on a reserve is really like. I live on a reserve and believe me it is no «La belle vie, quoi.» If you would like to be confined to an area the size of a postage stamp, with a bridge running over your head, a seaway and two major highways running through the land along with several railroad tracks, be my guest. Not only is most of the land space taken up by these various intrusions, the conditions on a reserve are not as relaxed as you envision. When people have been pushed and pulled by a system that was forced upon them they certainly do not benefit as you seem to think. One question I have to ask this, do you really think that Native people are the only ones that collect unemployment or welfare?

As for your remarks, Mr. Boulianne, concerning the «crisis» and Elijah Harper's position during Meech Lake I think you should obtain more information to understand why Native peoples have taken the position they have and not simply rely on the press's interpretation. We want to live our lives as we see fit, not how some other group thinks we should live. We are tired of giving up everything and being taken advantage of, we have given up all that

Cont'd on p.6

Ovide Mercredi.. Cont'd from p.5

we are prepared to give up and we are not going to give up who we are. French Canadians have every right to want to maintain their heritage, but so do Native peoples. We believe in dialogue but one that is not one-sided where one side does all the demanding and the other is expected to blindly and obediently agree.

You say that there were past errors made by past and present governments, this is true but what is also true is that Native peoples lives have been so intrinsically shaped by these errors that we are still feeling the repercussions. We just want to take control of our future and that of our children without giving up more than we already have given up.

One statement made by you, Mr. Boulianne, I found particularly offensive, it is in your last sentence, you say that Native leaders have to be less warrior-like and provocative in their statements, in favor of statements which are more «civilized.» Do you mean that what Native people or their leaders say is not civilized? I looked up the word to see its exact meaning. The Oxford English Dictionary (1988) defined «civilized» as follows: «to cause to improve from a savage or primitive stage of human society to a more developed one.» To ensure that I was not misinformed I looked up the word «civiliser» in the Robert & Collins French-English Dictionary (1989) it means «to civilize.» does this mean that you think Native people and Ovide Mercredi are uncivilized? Are the words spoken by Native leaders and the people they represent, primitive and savage? If you think so, you might as well come out and call one of us «un sauvage» because I take it as the equivalent.

Mr. Boulianne, you seem to think our only way of communicating is through violence since you use words such as

«attitude guerrière» and «guerre raciale». We do not rely on violence nor do we incite it. If we are physically threatened, we will defend ourselves, but we will not be the ones who provoke violence. you have focused on one situation the «crisis», but you have failed to notice the many other times we have come to a negotiating table when Quebec was not willing. The Constitutional discussions over the years are prime examples of Quebec's refusal to participate in negotiations. We are not the ones who throw temper tantrums like spoiled children by boycotting all talks. We believe in sitting down and communicating peaceably without confrontation.

One thing I would like to point out about the position of Native peoples in Quebec is that our goals are not uncommon to that of French Canadians: both want to maintain their identities. French Quebecers in past generations felt they were not being recognized and because of their numbers were able to do something about it. I am talking about the Quiet Revolution. Native Peoples do not have the same capability since we are much less in number than we once were, and we are spread out across the province.

Ovide Mercredi's closing statement is something I find very encouraging, in fact you should too since he expressly states how there should be a dialogue between First Nations and Quebec based on respect and equality. This seems «civilized» enough to me, what do you think? Well, I will let you make up your own mind by reading the closing statement, quoted as follows: «I invite you to participate in a constructive dialogue between First Nations and Quebec on the Constitutional issue. We should be building a new partnership based on mutual respect and support for our respective rights. Instead of trying to construct hierar-

chies of your rights over ours. Any relationship we develop must be based on respect and equality.»

This seems only fair. If you find it outrageous, confrontational or insulting, then perhaps Mr. Boulianne, you should look up the word «civilized.» In fact Ovide Mercredi specifically stated that Native peoples do not want a confrontation in his very last sentence, which reads: «Only through openness, of the mind and of the heart, can questions of such vital importance to your people and to ours be reconciled. The alternative, which we do not favor, is confrontation.»

As for your last comments, Mr. Boulianne, you say some Native groups, namely the Inuit, have disassociated themselves from Mercredi. I would like to know what you are referring to. The Inuit are in a different position from the other Native groups but as far as I know they support what Mercredi has to say. The Native Peoples in Quebec that Mercredi referred to in his statement are, Abenaki, Algonquin, Atikamekw, Cree, Huron, Mikmaq, Mohawk, Montagnais, Naskapi and Melecite.

I do not see anything confrontational, outrageous or insulting about the National Chief's statement. What I do find insulting is the way Native people have been described in your comments, Mr. Boulianne. You have stated that our leaders are promoters of war, that we are uncivilized, and you have agreed with a racist depiction of reserve life saying that all Native people collect welfare and unemployment along with other benefits, without ever realizing the hardships we have suffered. I want my people to be able to exist alongside yours without encroaching or infringing upon one another's rights. I hope one day you will share this more open-minded way of thinking. Nia:wen.

OVIDE MERCREDI : TAKE TWO

By Andrea Morrison, Nat. IV

I must admit, I read Martin-Pierre's article (Jan. 31, page 1) with a certain amount of horror. In the name of reconciliation, he turns a blind eye to the reasons for Ovide Mercredi's statement, and the context in which it was given.

Why is Mercredi confrontational? If you look at the history of aboriginal peoples and the «new arrivals», you begin to wonder why they aren't nuking the Parliament buildings. Here you have a bunch of whiteys arriving in a boat. They hop out, take a look at the endless land on the horizon, and proclaim «It is ours!» The fact that people have been living there since «time immemorial» doesn't stop them from «discovering» America. While some cases like Worcester have shown that our Yankee neighbours realize how pompous such a claim is, Canadian courts have all too often accepted that yes, **inhabited** land could be «discovered».

Now, you've got to remember that when the Europeans first arrived, the Indians were powerful. So, in the name of peace and cooperation, they made treaties. These treaties are the classic «doesn't-quite-fit-in-any-category» sui generis kind (meaning that it has both national and international aspects). But most of all, they were promises.....promises that the Crown would protect their land and their way of life from the encroachment of settlers (see the Royal Proclamation, 1763). Hey, and don't forget that we wrote up the treaties (Indians practiced an oral culture and usually didn't read or speak the colonizers' language). I wonder if any of those guys fudged a bit on the actual terms.

So here we are with more and more whiteys coming over in the boats. And they take more and more land away from the natives, because after all, they are savages and heathens (Oh, and who had

the guns then, hmmm?). There was never a Custer's last stand, or a genuine surrender, just a gradual eating away at their land and life, ignoring past promises. And we're not talking ancient history here. Just have a close look at the way the James Bay Agreement was brought about, and you'll have a good example of how we use our legal system full of our lawyers, judges, and rules to brush aside their objections and their interests.

O.K. You ask why Mercredi's is confrontational. Well, Quebec, along with other provinces, has denigrated and undermined First Nations for centuries. We have ignored the richness of their social organization, and their right to self-determination. We have imposed majority electorate systems on political systems that had already developed the democratic dream - consensus-making and community. They had no jails, no policemen, but had clear principles of fairness and justice, along with punitive as well as reformatory powers (see the Great Law of Peace). I mean, let's ask ourselves who were the «civilized» and who were the «savages».

The «equilibrium» that you speak of is not thanks to the Canadian or Quebec government. The Oka crisis, for example, did not happen overnight. It took years of stalling negotiations, ignoring legitimate land claims etc. And the crowning glory is that they were building a golf course over a cemetery! Aborigines have asked peacefully, have endured the nightmare of fighting long, expensive and usually disappointing court battles. And when they finally said «enough is enough», they adopted a **defensive** position.

Elijah Harper is a hero to many native peoples because, as usual, Canadians were ignoring their interests during constitutional negotiations. Nor was there a lack of warning that Harper was dissatisfied and wasn't going to step aside for the

majority. We just didn't believe he'd go ahead and use our own rules to force us to listen.

Oh, and by the way. Mercredi didn't deny us quebeckers the right to self-determination. He merely dared to make a comparison - «If you deny that we are a distinct people, how can you have the arrogance to call yourself distinct people?» Think about it - they speak different languages, have a different history and culture, and have been on this territory centuries before we Europeans even got a whiff of it. And yet we continue to deny their right to self-determination as a distinct people! Now Clark is even telling them that it is politically incorrect for them to use those words. You gotta hand it to us whiteys. We sure got **chutzpa!**

I do agree that there may be «un sérieux malaise en train de s'enraciner très profondément au sein de nos mentalités» but let's not be so quick to point the finger at native peoples. Maybe the problem is not their «militant» and «provocative» attitude (although I agree whole-heartedly that we must find a common ground for reconciliation). Maybe the problem is that we whiteys just don't want to remember some old promises, and the only way we will, is if they make us remember and live up to them. Just something to think about, eh?

THE WILSON MOOT

By Janet Bolton and Tanya Goldberg

McGill participated in the first annual Wilson Moot competition during the weekend of February 21st-22nd, 1992. The Moot was created by the Toronto firm of Osler, Hoskin & Harcourt, in honour of their former partner and Supreme Court Judge, Madam Justice Bertha Wilson. It is intended to foster a better comprehension of legal issues affecting traditionally disempowered groups in Canadian society. This year five Ontario law schools and McGill took part in the competition.

Cette année, la question traitait de l'égalité entre les sexes et les races, et du droit des autochtones. Avant 1985, la Loi sur les Indiens, L.R.C. 1985, c. I-6 refusait de reconnaître à toute femme autochtone qui se mariait avec un homme non-Indien le statut d'«Indien». La loi fut changée en 1985 pour enlever cette discrimination. Notre problème concernait la constitutionnalité d'une condition adoptée par une Bande d'Indiens suite à un accord avec le gouvernement fédéral qui leur accordait une plus grande autonomie. Cette condition visait à réintégrer

les femmes autochtones qui avaient perdu leur statut d'Indien avant 1985 suite à leurs mariages avec un non-Indien, mais sans toutefois leur donner la totalité des droits dont jouissent les hommes au sein de leur communauté.

The problem was carefully drafted to oppose the values of sex equality and Native self-determination. A similar case, Twinn v. A.G. Canada, is currently pending before the Federal Court. All of the participants and the judges agreed that the case did not lend itself to any easy solution.

The McGill team, composed of Adelle Blackett, Janet Bolton, Tanya Goldberg and Lisa Lifshitz, placed second overall, and Adelle Blackett was awarded the prize for best oral pleader. The final panel was presided by Madam Justice Beverly McLachlin of the Supreme Court, Madam Justice Louise Arbour of the Ontario Court of Appeal and Ms. Mary Eberts of Tory Tory DesLauriers & Binnington. McGill pleaded against the University of Toronto in the finals but, despite a fine effort by Janet Bolton and Tanya goldberg, the University of

Toronto emerged victorious.

L'équipe de McGill voudrait remercier chaleureusement les études suivantes pour leurs contributions généreuses: **Clark Lord Rochefort Fortier, O'Reilly Mainville, Byers Casgrain, Heenan Blaikie, Hutchins, Soroka & Dionne et Ogilvy Renault.** Sans le soutien financier de ces études, notre participation au Tribunal-Ecole Wilson aurait été impossible. Nous aimerions également remercier le doyen Morrisette pour son soutien financier et nos conseillers, les professeurs Richard Janda et Colleen Sheppard, ainsi que toutes les personnes qui ont jugé nos pratiques et les nombreuses personnes qui nous ont aidées au cours de notre préparation.

We hope that McGill will continue to participate in the Wilson Moot in the future. The Moot provides insight into important areas of the law, and is a worthwhile and rewarding experience for all those involved.

Wicks' Outcasts

